IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 277 OF 2005

Syndicate Bank ...Petitioner

Versus

M/s. Herald Engineers & Ors. ...Respondents

.....

Mr. Prashant Pandit i/b B.M. Gupta & Associates for Petitioner

Mr. Ajay D. Magrdum h/f S.S. Patwardhan for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 31ST JANUARY, 2005

P.C.:-

1. Heard Mr. Pandit, the learned counsel for the Petitioner Bank who is the plaintiff in Special Civil Suit No. 158 of 1989. By the impugned order dated 15.1.2005 the learned Civil Judge, Senior Division Nashik has rejected the application filed by the plaintiff at Exh.199. It was contended by the Bank that the defendants should be called upon to lead the evidence in support of application filed by them at Exh.196 and their failure to do so would result in dismissal of the application. This contention was raised by taking support of the order passed by this Court in Review Application No.3 of 2001 decided on 11.7.2002.

2. The trial court has considered the arguments advanced by both the parties and noted that this Court had granted liberty to the defendants to lead the evidence but the said order cannot be interpreted to mean that the application of the Bank at Exh.199 was required to be allowed. If the defendant failed to lead the evidence the legal consequence will follow.

3. It is also required to be noted that the petitioner is a Nationalised Bank and its suit for recovery is pending for last more than 15 years. Rather than getting the main suit decided, it appears that the Bank is very much interested in filing the interlocutory application. The reasoning given by the trial court does not call for any interference under Article 227 of the Constitution. At the same time the application at Exh.196 as well as the pending suit are required to be expedited.

4. Hence, the writ petition is rejected summarily and the trial court is directed to decide the application at Exh.196, if still pending, within a period of three months from today. Trial of the Suit is hereby expedited.